#### IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA

CARL HUTTO,

Plaintiff

v.

: Civil Action No. 2:06-CV-328-WKW

TERRANCE ROSE, et al.,

Defendants.

#### **AFFIDAVIT**

Before me, the undersigned authority, a Notary Public in and for the State of Alabama at Large, personally appeared Willie J. Thomas, who being known to me and being by me first duly sworn, deposes and says:

My name is Willie J. Thomas. I am currently employed with the Alabama Department of Corrections as a Warden III at Elmore Correctional Facility in Elmore, Alabama. I am over twenty-one (21) years of age.

I hereby certify the Disciplinary Report attached to this affidavit to be a true and correct copy of a document provided to me by Draper Correctional Center. I hereby certify the Institutional Incident Report ECC 04-501 attached to this affidavit to be a true and correct copy of a document on file at Elmore Correctional Facility.

STATE OF ALABAMA: **COUNTY OF ELMORE:** 

Sworn to and subscribed before me and given under my hand and official seal on this the 12th day of June, 2006.

My Commission expires February 3, 2007

EXHIBIT

	Jί	JUN-09-2006 14:55 DRAPER CORF Case 2:06-cv-00328-WKWANAMA D	RECTIONAL CTR	? 4CDKURÜGÖN	334 567 <b>06/19/200<u>6</u> -</b> F	1519 P.01/06 Page 2 of 17
י מחת	i F	DIS 2 Form 225B (Revised 1/30/2003)	CIPLINARY RE	PORT	ECC	102-Pac
500		Tionic Transfer and an arrangement	•			
1.		INMATE: Hutto, Carl	CUSTODY:	Min	AIS NO.:	W/148575
2.		FACILITY: Elmore Correctional Center	<u> </u>			tt n A
3.		The above named inmate is being charged by specifically Assault on Persons Associated v	Officer Terran	<u>ice Rose</u> Wil. C. from regul	n violation of rule ation # 403, which	#29 occurred on or
		about 9 April, 2004 at (time) 9:35pm (am / p	m), Location: A	dorm Cubi	cle. A hearing on	this charge wil! be
		held after 24 hours from service.				
4.		Circumstances of the violation(s) are as followed Hutto W/148575, Inmate Hutto turned and	ws: When Officer	<u>cer Terranc</u> · Rose in the	e Rose began to s	search inmate Cari
		Hutto W/1405/5, Inmate Hotto turned and	1 BUTHER CHIEEF			
		Terrance Rose COI		Jen V K	00 001	
		Arresting Officer / Typed / Rank	A	rresting Offic	cer / Signature / Ra	ank
_		7 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	وعد دست د فرد	ha farancina	, unan tha abawa	named inmate and I
5.		I hereby certify that I have personally servinformed inmate of his/her right to present	ed a copy of the a written or of	ne ioregoing ral statement	t at the hearing a	nd to present written
	1	questions for the witnesses on this the	14/16 day of _	Hpril	, 2003, at	(time) // 30 p-m
		(amam).	/	<i>.</i>	1/2/	,
c	+	Ldward f. Dond Cot	x	Calo	/WX 148:	575
	7	Serving Officer / Signature / Rank	Inn	nate's Signat	ure / AIS Number	
				YES	Call	off 148575
б.		Witnesses desired? NO Impate's Signa	ture ,	YES	Inmate's Signatur	e
7.		If yes, list: Charles Mellu	m w/_			
8.		Hearing Date 4-17-04 Tim	1e 5145	pm	Place Drapu	- Seg HAllway
9.	-	Inmate must be present in Hearing Room. If	he/she is not pro	esent explain	in detail on additi	onal page and attach.
10.		A finding is made that inmate (is /)s not) cap	pable of represer	nting him/he	rself.	
			$\Omega$	. 1 &.	nilu Co	·
			Signa	ature Hearin		
11.		Plea: Carl Hotto 148575 (No	ot Guilty	<b>Y</b> .	)	Guilty
12.		The Arresting Officer, Inmate, and all witnes		to tell the tru	nth	
14.		The Arresting Officer, minate, and an witness			Λ	
			<u> </u>	Hoaring Offi	Jul 60 11	
			•	\	1	
13.		Arresting Officer's testimony (at the hearing Carl Hutto W/148575, Inmate Hutto		<u>ficer Terr</u> struck Of	<u>rance)Rose beg</u> ficer Rose in	an to <u>search Imma</u> te the chest.
	] -	COLT DOUGH NY 140575Y MINUTE PROCES			7,-23	
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	-	- 13 × 2 8 3	CorDept.	In so C	Co. 0 C.	7-1503
	-		Phone # 5 K	7-1463	Phona # 5 6	1579 -
	-		Fax # C/G	7-1804	Fax #5 6 7-	
			<u> </u>		SICNED:	PA (Pages)
		Same of the same o	3	•	#16 - FREE 124	
		*******	_	<u> </u>		

	parate myself from Officer Rose hitting me.
Also see attached que	stions".
Witness:	Substance of Testimony:
<u> </u>	
	Substance of Testimony:
Witness:	Substance of Testimony:
The inmate was allowed to su	ubmit written question to all witnesses. Copy of questions and answers are
anached.	Mais O Swillow Coll
	Signature / Hearing Officer
The Following witnesses wer	re not called - reason not called
I. <u>Charles McCllum</u>	was not available to come to Draper
3	
After hearing all testimon∨ it	he Hearing Officer makes the following findings of fact: (Be Specific)
	at: On 4-9-04 at approximately 9:35p.m., Inmate Carl Hutto
··	CALL TO THE COLUMN TO THE TAX AND THE TAX
V/M 148575 điđ willful	lly attempt to inflict injury upon Officer Terrance Rose.
V/M 148575 điđ willful	lly attempt to inflict injury upon Officer Terrance Rose. to is guilty of Rule violation #29.
V/M 148575 điđ willful	lly attempt to inflict injury upon Officer Terrance Rose.
V/M 148575 did willful Therefore, Inmete Hutt	lly attempt to inflict injury upon Officer Terrance Rose. to is guilty of Rule violation #29.  Based on the testimony of the arresting officer who stated
M/M 148575 did willful Therefore, Inmate Hutt Basis for Finding of Fact: under oath that Inmate	Based on the testimony of the arresting officer who stated the Hutto willfully attempted to inflict injury upon Officer Rose.
M/M 148575 did willful Therefore, Inmate Hutter Basis for Finding of Fact: onder oath that Inmate This finding is also be	Based on the testimony of the arresting officer who stated that willfully attempted to inflict injury upon Officer Rose assed on the statement Inmate Butto made when he stated "he
M/M 148575 did willful Therefore, Inmate Hutter Basis for Finding of Fact: onder oath that Inmate This finding is also be	Based on the testimony of the arresting officer who stated the Hutto willfully attempted to inflict injury upon Officer Rose.
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Basis for Finding of Fact: under oath that Inmate This finding is also b (Hutto) did not intent Hearing Officer's Decision: Recommendation of Hearing Dass/leave, phone and Warden's Action - Date Approved	Based on the testimony of the arresting officer who stated  Hutto willfully attempted to inflict injury upon Officer Rose  cased on the statement Inmate Hutto made when he stated "he tionally try to hit Officer Rose". The Hearing Officer (Cont'd  X Guilty Not Guilty  Officer: 45 days Disciplinary Segregation: 45 days loss of vis store privileges.
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Basis for Finding of Fact: under oath that Inmate This finding is also be (Hutto) did not intent Hearing Officer's Decision: Recommendation of Hearing Dass/leave, phone and Warden's Action - Date Approved Disapproved Other (specify) Reason if more then 30 calendar thereby certify that a completed	Based on the testimony of the arresting officer who stated a Mutto willfully attempted to inflict injury upon Officer Rose cased on the statement Inmate Mutto made when he stated "he tionally try to hit Officer Rose". The Hearing Officer (Cont'd X Guilty Not Guilty  Officer: 45 days Disciplinary Segregation: 45 days loss of vis store privileges.  Signature Fearing Officer Virgil Smiley. Cort Typed Name and Title

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CONTINUED			ttempted to infl	ict injury upon a	officer,	employee
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### ALABAMA DEPARTMENT OF CORRECTIONS Disciplinary Report

P.04/06

Elmo	te Cotten		1721								
Conti	nuzica S	hest:					•	Incident R	eport : E	CC04-50	1,
_			tto , Car	rl				AIS #:	W/14	3575	<del></del>
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se 2:06-cv-00328-WKW-WC Document 16-4 Filed 06/19/2006 Page 6 of 17 (1) (1) often lose cid monate Auto Telle smeet to you or Curse you (3) Dil inmate Kutto Come into the Cube to tell you be thought you allas his name for mail? ( ) what did you ask inmite theth? and what did is mote that answer (5) did you look then the mail quilly and did not see inmate Author Mail, and told lim to Come out get it later? what did Hutto answer (6) Sel inmate Natto blum to the Cule to get his Mail after he beturned from Church Service sout 8:45 p.m.? 100 Sou? Hutto asking you of he Could fiel up his what did (8) was you just setting in a Chair in the Cuts when inmote tracked on the Apor at 8:45 f.m.? (9) officer lass did you Call mail Call again fuet before Court time? (10) agric/smatch, how many people were collect for mail at that time? was innate Huttob name Called? (11) did not the species come to the Cube to get their mail? and sid most But mat all Come into the Cube Breause there waint from everyth for them wall to set in. i all to get in. (12) Lutten all names were Called and I was still Standing there what did spen day to investe thillo? after asking that question what did that answer? (13) What did you day after inmete Kutto stated to your you must hove Called his feace of mail first Before begatup there:

(14) after law what did you say to immete Kutto then?

(15) did your day to immete Notto why are your pooling with me?

(16) did immete Hullo bespond by daying for not fooling with your afficer.

(17) did you then tell fatto to get out he wast getting any next?

(19) after you told inmate fitto to get out of the last what did he say, as he was going toward the last door? N/A

(20) did you then day to immate Hatto what did you day? Sid he he past to you Exactly what he had said the first time which was that oh which you that oh will just get it morelow. (21) bill you then tell inmate thitle to get back into the Cube, By saying get (23) office for want inmate that way humble toward you during all of this week his sporch answeing you? NO 424) did you point and till ignate Nutto to get on the well? did Nutto obey What you teld him to do? " N/A 25) is it normal fautine to state a farsons down at mail Call? Why did you want to shake inmote Nutto down? feet Coming to fick up mail would not trigger such action as that would st afficer face? N/D (36) When inmate thetto turned his back to you to work to the wall your pointed too what did you do then stidyou altacked immate that of from their By showing him and hiting him? NA 27) what did in mater Wetto do after you obtacked him by shawing and hilling him 28) when innoted with turned around in shock from theing attacked did he stick Rie arme out in front of his person to try and fratest his face?

(1) below in motor with did their didnit you continue strikeing in mote Hutto in the face as fact and as had as you could? Did tother afficers assist you in taking in mosts that down to the floor?

(2) how many times did your hit inmote that officer Pasa? Sid any other afficer hit inmote Nutto? Is how many times. With inmote Hutto afficer him in the face?

(3) did inmete Nutto tall your be forgone your for liting him in the face? It was don't be talking to what hid for Say to Immote that which he talk you that? I true don't be talking to me or you'll get some more of what you furt you treet it officer have.

### ELMORE CORRECTIONAL CENTER INSTITUTIONAL INCIDENT REPORT



1. Institution: ELMORE CORRECTIONAL CENTER	2. Date: 9 April 2004	3. Time: <b>9:35pm</b>	4. Incident Number: ECC04-501				
5. Location Where Incident Occurre	ed: A-Dorm Cubicle		6. Type of Incident: #29 Assault on a Person Associated with DOC (Use of Force)				
7. Time Incident Reported: 9:40pm		0 1171 72 1 1 1 22	rt: Sergeant Randy Frank				
9. Victim: a. N/A	· · · · · · · · · · · · · · · · · · ·		No				
	ıll name)						
b	· · · · · · · · · · · · · · · · · · ·		No				
(type full	ll name)						
10. Suspects:	11.	. Witnesses: a. N/A	No				
			No.				
a. Hutto, Carl	No. <u>W/148575</u>		No				
b			No.				
с.							
			No.				
			No				
e	No.	g	No				
Physical Evidence:							
12. Type of Evidence: N/A		·					
13. Description of Evidence: N/	<u>/A</u>						
	·						
14. Chain of Evidence: N/A							
a.							
b							
С.							
d.							
15. Narrative Summary: On April	9. 2004 at approximately 9:3	25nm inmate Carl Hutto V	W/148575 entered the cubicle of A-				
Donn. futiale finito became a	argumentative towards Office	er Terrance Rose because i	he (inmate Hutto) had not received				
Some man. Inhiate futto was	s instructed by Officer Rose to	to leave the cubicle. Inmate	te Hitto refused to comply with the				
order. Immate ridito was msu	ructed by Officer Rose to place	ice his hands on the wall of	of the cubicle to be seprebed. As Officer				
i rose began the scarch, hilliate	e nullo lumed and struck ( )##	ficer Rose in the chest. Of	ficer Terrance Pose than maked				
minute the moon of the situations	ar, and along with Officers St	teven Sugge Joseph Grigo	or and Tarranca Mall/harton mlacad				
minate right on the Hoor. The	mate flutto received several s	scratches to his face as a re	esult Officer Griggs than placed a get a				
manacans on minate flutto. St	ergeam Kandy Frank was not	titled of the incident at ann	proximataly 0.40pm Officer Commission				
Origes were monacted to fixit	isport impate Hutto to Staton	Health Care Unit at appro	proximately 9.40pm. Officers Suggs and eximately 9.42pm. Inmate Hutto was ttached Body Chart). Captain Horace				
Durwing the On Can Officer, a	ши Саргані John Mannews w	Vere notitied at approximat	stely 0,45mm Donoty Wander Clauder				
Tradicy was nother of the Inc	cidelli ai approximately 9:4xn	om Warden James Dellioad	ich of Draper Correctional Contantina				
mounted of the meldent at appl	TOXIIII AUCIV TO: NORM. NO INTIT	ities Were renorted by the (	Officers involved At an auditorial				
Liviahant Omnona Konett In	odd and James Hess transport	ted inmate Hutto to Stator	Health Care Unit for a hody chart price				
to being transferred to Draper	1:15p m., Officers Robert Todd and James Hess transported inmate Hutto to Staton Health Care Unit for a body chart prior o being transferred to Draper Correctional Center.						

DISTRIBUTION:

ORIGINAL Investigation and Inspection Division COPY to Deputy Commissioner, Institutions COPY to Institutional File COPY to Central Records File

Filed 06/19/2006 Page 9 of 17 Case 2:06-cv-00328-WKW-WC Document 16-4 D of C | N 602 CONTINUATION SHEET Institution: Incident Number: ELMORE CORRECTIONAL FACILITY Date: Type of Incident #29 Assault on a Person Associated with 9 April 2004 DOC (Use of Force) Narrative Summary (Continued) Page No. 2 Inmate Hutto was issued a disciplinary for rule violation # 29-Assault on a Person Associated with DOC. Inmate Hutto was transferred to Draper Correctional Facility at approximately 11:30pm by Officers Hess and Todd. Terrance Rose, COI

### **EMERGENCY**

ADMISSION DATE TIME ORIGINATING FACILITY	PEE D
ALLERGIES // 4.2	CONDITION ON ADMISSION  DISCOOD   FAIR   POOR   SHOCK   HEMORRHAGE   COMA
VITAL SIGNS: TEMP ORAL RESP.	PULSE 2 B/P //
NATURE OF INJURY OR ILLNESS	ABRASION /// CONTUSION # BURN XX FRACTURE Z LACERATION / SUTURES
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that could be less of the	
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PIRTE POU.	
DIAGNOSIS	
INSTRUCTIONS TO PATIENT	
DISCHARGE DATE TIME RELEASE / TRANSFERRE	D TO DOC CONDITION ON DISCHARGE
NURSE'S SIGNATURE DATE PHYSICIAN'S SIGNATURE	D TO SODOC CONDITION ON DISCHARGE  AMBULANCE LYSATISFACTORY POOR  OFFICE CRITICAL
NURSE'S SIGNATURE DATE PHYSICIAN'S SIGNATURE	DATE CONSULTATION
INMATE NAME (LAST, FIRST, MIDDLE)	DOC# DOB R/S FAC.
Hully Corl	118575 1-10-61
DUE NO 70007 /White - Decord Conv. Volla	

## **ELMORE CORRECTIONAL CENTER**

FROM: Sergeant Randy Flan		, Team Leader/Official
TO: Inmate <u>Carl Hutto</u>		AIS#_W/148575
RE: Administrative Segregation		
You are being placed in Administrative associated with the ALDO		or Rule Number 29 Assault on Person
	· · · · · · · · · · · · · · · · · · ·	
		nstructed to face the wall to be
searched Inmate Hutto tur	ned and s	struck Officer Terrance Rose in the Ches
rour confinement in Segregation is for a confinement, you will be released, s Extensions must be authorized by the A	a period of no erved a PR Assistant Ward and holidays.	denthis 9thday of april20,04 It more than seventy-two (72) hours. Prior to the 72 hour (Progress Review), a Disciplinary Notice or extended. It den for further investigation time when justified. The 72 It was also be confined in Segregation by order of 1 & 1
No exceptions), newspapers or magaz	ctor upon requirines. You witting Unit at the	en by the Segregation Supervisor, a nurse and officers uest from the nurse. You will not be permitted television ill be given a verbal and written orientation concerning e time you enter the Unit. You will be provided a healthy l, comb, toothbrush, face towel).
reading materials allowed are one (1) nstitutional Library. You may receive (1) the sent to the second to the seco	) religious boo one (1) visit p Segregation S	ng and bedding will be issued by the Segregation Unit. ok and one (1) additional book or magazine from the per month by a person(s) on your approved visiting list. Supervisor. You will be permitted one (1) phone call per steen privileges will be authorized on a limited basis.
	have collecte	ed and secured all of your property from population, and
		Inmate's Signature
ate	Time	Witness
Inmate's property has been collected Inmate was afforded the opportunity	and placed ir to place a pho	nto the custody of the Segregation Unit. One call prior to his being confined.
a. Refused: b. Called:		
ote: 1 copy to inmate. 1 copy to Seg. Commander for Dis	stribution	Witness

# SOCIAL SERVICE ACTION

	C <del>arl Hutte</del> TION	more Correc	AIS_				R&S_ <del>w</del> ,	
	: Rescind:			,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,				
ACTION								
	Amend:			· · · · · · · · · · · · · · · · · · ·		. **.		
	Transfer: Fro	om: <b>Elmore C</b> o	orrectiona	l Center	To: _	Draper C	orrection	al Center -
	Custody: Fro	m: Min			To: _			
REASON		g Disciplinated with t		n for Ri	le #29	Assault	on Person	ns .
	MASOCI	area with	ine Auboc					
						*		

CONTINUATION SHEET					
Institution: Elmore Correctional Center	Incident Number:ECC04-501				
Date: 4-9-04	Type of Incident: #29-Assault on a Person Associated with DOC (Use of Force)				
Narrative Summary (Continued) Page No. 3					

STATEMENT OF JOSEPH GRIGGS, COI

Officer Griggs did observe Inmate Hutto and Officer Rose in a physical altercation. It was not clear to Officer Griggs the technique used by Officer Rose to take Inmate Hutto to the floor because Officer Griggs was standing on the opposite side of the Cubicle, and Officer Rose had his back to Officer Griggs. By the time Officer Griggs got to Officer Rose and Inmate Hutto, Inmate Hutto was on the floor. Officer Griggs then applied handcuffs on Inmate Hutto. To the best of my knowledge, this is all I know about this incident.

CONTI	NUATION SHEET
Institution: Elmore Correctional Center	Incident Number:ECC04-501
Date: 4-9-04	Type of Incident: #29-Assault on a Person Associated with DOC (Use of Force)

Narrative Summary (Continued) Page No. 4

STATEMENT OF STEVEN SUGGS, COI

I, Officer Steven Suggs, did observe Inmate Carl Hutto and Officer Terrance Rose in a physical altercation. I assisted Officer Rose in placing Inmate Hutto on the floor by grabbing Inmate Hutto's left arm and pulled him towards the floor. Officer Joseph Griggs then handcuffed Inmate Hutto. This is all I know about this incident.

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	CONTINUATION SHEET
Institution: ELMORE CORRECTIONAL FACILITY	Incident Number: ECC 04-501
Date: 4-9-2004	Type of Incident: #29 Assault on a Person Associated with DOC (Use of Force)

Narrative Summary (Continued) Page No. 2

### STATEMENT OF TERRANCE McWHORTER, COI

On April 9, 2004, I, Officer Terrance McWhorter, observed Officer Terrance Rose instructing inmate Carl Hutto W/148575 to face the wall in A dorm Cubicle. Inmate Hutto became argumentative towards Officer Rose and shoved Officer Rose in the chest. Officer Rose then grabbed inmate Hutto by the collar and I grabbed inmate Hutto by the right arm and right leg and with the assistance of Officer Steven Suggs, placed inmate Hutto on floor. Inmate Hutto was instructed to stop resisting and to place his hands behind his back. Inmate Hutto was then handcuffed by Officer Joseph Griggs and escorted to the shift office. This statement is true and correct.

**Terrance McWhorter COI** 

SOCIA	L SERV	VICE A	CTION

SOCIAL SERVICE ACTION								•	
NAME _	Carl	l Hutto	And the second of the second of	AIS_	W/148575	<u> </u>	R	& S _ W/m	
INSTITU	JTION	- <u>El</u> r	nore Corr	ectional C	enter CUST	ODY Min.	·		
ACTION	I: Res	scind:		·		· · · · · · · · · · · · · · · · · · ·	·	·	
	An	nend:				·		·	
-				Correction			er Corre	ctional C	enter
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REASO	N(S)			inary action the ALDOC	on for Rul	le #29 Ass	sault on	Persons	
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DATE:	9 Ap	ril 200	4	·	APPROVEI	D:			
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### **EMERGENCY**

ADMISSION DATE TIME ORIGINATING FACILITY  AM SIR PDL SC	
ALLERGIES NKH	CONDITION ON ADMISSION  GOOD □ FAIR □ POOR □ SHOCK □ HEMORRHAGE □ COMA
VITAL SIGNS: TEMP / U / , ) ORAL RECTAL RESP. 18	PULSE 8   B/P 12   78   RECHECK IF SYSTOLIC / <100> 50
NATURE OF NUMBERS	ABRASION /// CONTUSION # BURN XX FRACTURE Z LACERATION / SUTURES
PHYSICAL EXAMINATION  Finds NO Swelling, No Redduess  NO Inducation, or abrazions  Able to more finger. Bend  arm a wast	PROFILE RIGHT OR LEFT  RIGHT OR LEFT  ORDERS / MEDICATIONS / IV FLUIDS  TIME BY
DIAGNOSIS	
INSTRUCTIONS TO PATIENT	
DISCHARGE DATE TIME RELEASE / TRANSFERRE	☐ AMBULANCE ☐ SATISFACTORY ☐ POOR ☐ ☐ FAIR ☐ CRITICAL
NUBSE'S SIGNATURE 4/9/0 Y PHYSICIAN'S SIGNATURE	E CONSULTATION
INMATE NAME (LAST, FIRST, MIDDLE)  PUS CE CONCE  PHS. NED 70077  OMbits - Record Conv. Voll.	DOC# 10/4/73 P/S FAC.